

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 14, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MYSTICAL L.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:22-cv-03084-MKD

ORDER AFFIRMING DECISION
OF COMMISSIONER

ECF Nos. 10, 11

Before the Court are the parties' briefs. ECF Nos. 10, 11. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court affirms the Commissioner's decision.

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. §

1 404.1502(a). Further, a district court “may not reverse an ALJ’s decision on
2 account of an error that is harmless.” *Id.* An error is harmless “where it is
3 inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at 1115
4 (quotation and citation omitted). The party appealing the ALJ’s decision generally
5 bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S.
6 396, 409-10 (2009).

7 **FIVE-STEP EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within
9 the meaning of the Social Security Act. First, the claimant must be “unable to
10 engage in any substantial gainful activity by reason of any medically determinable
11 physical or mental impairment which can be expected to result in death or which
12 has lasted or can be expected to last for a continuous period of not less than twelve
13 months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be
14 “of such severity that he is not only unable to do his previous work[,] but cannot,
15 considering his age, education, and work experience, engage in any other kind of
16 substantial gainful work which exists in the national economy.” 42 U.S.C. §
17 423(d)(2)(A).

18 The Commissioner has established a five-step sequential analysis to
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §
20 404.1520(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s

1 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in
2 “substantial gainful activity,” the Commissioner must find that the claimant is not
3 disabled. 20 C.F.R. § 404.1520(b).

4 If the claimant is not engaged in substantial gainful activity, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers
7 from “any impairment or combination of impairments which significantly limits
8 [his or her] physical or mental ability to do basic work activities,” the analysis
9 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant’s impairment
10 does not satisfy this severity threshold, however, the Commissioner must find that
11 the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to
13 severe impairments recognized by the Commissioner to be so severe as to preclude
14 a person from engaging in substantial gainful activity. 20 C.F.R. §
15 404.1520(a)(4)(iii). If the impairment is as severe or more severe than one of the
16 enumerated impairments, the Commissioner must find the claimant disabled and
17 award benefits. 20 C.F.R. § 404.1520(d).

18 If the severity of the claimant’s impairment does not meet or exceed the
19 severity of the enumerated impairments, the Commissioner must pause to assess
20 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),

1 defined generally as the claimant's ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
3 404.1545(a)(1), is relevant to both the fourth and fifth steps of the analysis.

4 At step four, the Commissioner considers whether, in view of the claimant's
5 RFC, the claimant is capable of performing work that he or she has performed in
6 the past (past relevant work). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is
7 capable of performing past relevant work, the Commissioner must find that the
8 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of
9 performing such work, the analysis proceeds to step five.

10 At step five, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing other work in the national economy.
12 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner
13 must also consider vocational factors such as the claimant's age, education, and
14 past work experience. *Id.* If the claimant is capable of adjusting to other work, the
15 Commissioner must find that the claimant is not disabled. 20 C.F.R. §
16 404.1520(g)(1). If the claimant is not capable of adjusting to other work, the
17 analysis concludes with a finding that the claimant is disabled and is therefore
18 entitled to benefits. *Id.*

19 The claimant bears the burden of proof at steps one through four above.
20 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to

1 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
2 capable of performing other work; and 2) such work “exists in significant numbers
3 in the national economy.” 20 C.F.R. § 404.1560(c)(2); *Beltran v. Astrue*, 700 F.3d
4 386, 389 (9th Cir. 2012).

5 **ALJ’S FINDINGS**

6 On August 15, 2017, Plaintiff applied for Title II disability insurance
7 benefits alleging a disability onset date of July 25, 2016.² Tr. 82, 86. The claim
8 was denied, and Plaintiff did not timely file a request for reconsideration. Tr. 86.
9 Plaintiff filed a new application for Title II benefits on October 11, 2018.³ *Id.* An

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12 ² Plaintiff previously applied for Title II and Title XVI benefits on July 11, 2014,
13 with an alleged onset date of November 1, 2009; the claim was denied initially and
14 on reconsideration, and the denial was upheld by an ALJ on May 26, 2016. Tr. 74,
15 89. Plaintiff appealed the decision, and the Appeals Council declined review and
16 this Court denied Plaintiff’s Motion for Summary Judgment. Tr. 12, 74; *Mystical*
17 *L. v. Andrew Saul*, No. 1:17-cv-3166-MKD (E.D. Wash. Nov. 21, 2018).

18 ³ The administrative record appears to be incomplete as several items typically
19 found in a record are not present in this case. For example, Plaintiff’s applications
20 for benefits and this Court’s prior Order are not contained in the record. However,

1 ALJ dismissed the case, finding *res judicata* applied. Tr. 85-87. The Appeals
2 Council remanded the case on February 27, 2021. Tr. 88-90. The Appeals
3 Council noted that on October 16, 2018, Plaintiff was found to have good cause for
4 the untimely reconsideration request, and thus the request for reconsideration for
5 the 2017 application was processed and the October 2018 application was not
6 processed. Tr. 90. Therefore, there was a period of time that was unadjudicated
7 and the case was remanded to adjudicate the two-month relevant period. *Id.*
8 Plaintiff appeared before an administrative law judge (ALJ) on October 28, 2021.
9 Tr. 25-46. On November 5, 2021, the ALJ denied Plaintiff's claim. Tr. 8-24.

10 At step one of the sequential evaluation process, the ALJ found Plaintiff,
11 who met the insured status requirements through September 30, 2016, has not
12 engaged in substantial gainful activity since July 25, 2016. Tr. 15. At step two,
13 the ALJ found that Plaintiff had the following severe impairments at the date last
14 insured: degenerative disc disease, sacroiliitis, coccydynia, and obesity. *Id.*

15 At step three, the ALJ found Plaintiff did not have an impairment or
16 combination of impairments that met or medically equaled the severity of a listed
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19 Plaintiff has not argued any error regarding the incomplete record, and the Court
20 finds it is able to make an informed decision with the current record.

1 impairment. Tr. 17. The ALJ then concluded that Plaintiff had the RFC to
2 perform light work with the following limitations:

3 [Plaintiff] must be permitted to change position from sit to stand or
4 stand to sit approximately every 30 minutes at the work station (such
5 that approximately half of the workday is standing and half is sitting);
6 can occasionally climb ramps and stairs; should not climb ladders,
ropes or scaffolds; can occasionally stoop, kneel and crouch; should
not crawl; and should have no more than frequent exposure to
vibration.

7 *Id.*

8 At step four, the ALJ found Plaintiff was unable to perform any of her past
9 relevant work. Tr. 19. At step five, the ALJ found that, considering Plaintiff's
10 age, education, work experience, RFC, and testimony from the vocational expert,
11 there were jobs that existed in significant numbers in the national economy that
12 Plaintiff could perform, such as cashier, router, and assembler of small products II.
13 Tr. 20. Therefore, the ALJ concluded Plaintiff was not under a disability, as
14 defined in the Social Security Act, from the alleged onset date of July 25, 2016,
15 through the date last insured. Tr. 21.

16 On April 22, 2022, the Appeals Council denied review of the claim, Tr. 1-6,
17 making the ALJ's decision the Commissioner's final decision for purposes of
18 judicial review. *See* 42 U.S.C. § 1383(c)(3).
19
20

1 **ISSUES**

2 Plaintiff seeks judicial review of the Commissioner’s final decision denying
3 her disability insurance benefits under Title II of the Social Security Act. Plaintiff
4 raises the following issues for review:

- 5 1. Whether the ALJ conducted a proper step-two analysis;
6 2. Whether the ALJ properly evaluated Plaintiff’s symptom claims; and
7 3. Whether the ALJ properly evaluated the medical opinion evidence.

8 ECF No. 10 at 2.

9 **DISCUSSION**

10 **A. Step Two**

11 Plaintiff contends the ALJ erred at step two by failing to identify her somatic
12 symptom disorder as a severe impairment. ECF No. 10 at 4-6. At step two of the
13 sequential process, the ALJ must determine whether the claimant suffers from a
14 “severe” impairment, i.e., one that significantly limits her physical or mental
15 ability to do basic work activities. 20 C.F.R. § 404.1520(c). When a claimant
16 alleges a severe mental impairment, the ALJ must follow a two-step “special
17 technique” at steps two and three. 20 C.F.R. § 404.1520a. First, the ALJ must
18 evaluate the claimant’s “pertinent symptoms, signs, and laboratory findings to
19 determine whether [he or she has] a medically determinable impairment.” 20
20 C.F.R. § 404.1520a(b)(1). Second, the ALJ must assess and rate the “degree of

1 functional limitation resulting from [the claimant’s] impairments” in four broad
2 areas of functioning: understand, remember, or apply information; interact with
3 others; concentrate, persist, or maintain pace; and adapt or manage oneself. 20
4 C.F.R. § 404.1520a(b)(2)-(c)(4). Functional limitation is measured as “none, mild,
5 moderate, marked, and extreme.” 20 C.F.R. § 404.1520a(c)(4). If limitation is
6 found to be “none” or “mild,” the impairment is generally considered not severe.
7 20 C.F.R. § 404.1520a(d)(1). If the impairment is severe, the ALJ proceeds to
8 determine whether the impairment meets or is equivalent in severity to a listed
9 mental disorder. 20 C.F.R. § 404.1520a(d)(2)-(3).

10 Step two is “a de minimus screening device [used] to dispose of groundless
11 claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). “Thus, applying
12 our normal standard of review to the requirements of step two, [the Court] must
13 determine whether the ALJ had substantial evidence to find that the medical
14 evidence clearly established that [Plaintiff] did not have a medically severe
15 impairment or combination of impairments.” *Webb v. Barnhart*, 433 F.3d 683, 687
16 (9th Cir. 2005).

17 Plaintiff contends the ALJ erred in failing to find her somatic symptom
18 disorder to be a severe impairment. ECF No. 10 at 3-6. In 2020, Dr. Teal stated
19 Plaintiff had a provisional diagnosis of somatic symptom disorder. Tr. 512.
20 Plaintiff concedes the provisional diagnosis was given in 2020 but contends “there

1 is no evidence to indicate this was a new impairment” and thus contends the
2 diagnosis existed during the relevant period. ECF No. 10 at 3-6. However,
3 Plaintiff was not diagnosed with somatic symptom disorder but rather given a
4 provisional diagnosis. Plaintiff does not cite to any evidence she was diagnosed
5 with somatic symptom disorder prior to her date last insured. Additionally, even if
6 Plaintiff was diagnosed with somatic symptom disorder, Plaintiff does not cite to
7 any evidence that indicates the disorder caused more than mild limitations during
8 the relevant adjudicative period. Plaintiff has not met her burden in demonstrating
9 the ALJ erred at step two. Plaintiff is not entitled to remand on these grounds.

10 **B. Plaintiff’s Symptom Claims**

11 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
12 convincing in discrediting her symptom claims. ECF No. 10 at 6-13. An ALJ
13 engages in a two-step analysis to determine whether to discount a claimant’s
14 testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2.
15 “First, the ALJ must determine whether there is objective medical evidence of an
16 underlying impairment which could reasonably be expected to produce the pain or
17 other symptoms alleged.” *Molina*, 674 F.3d at 1112 (quotation marks omitted).
18 “The claimant is not required to show that [the claimant’s] impairment could
19 reasonably be expected to cause the severity of the symptom [the claimant] has
20

1 alleged; [the claimant] need only show that it could reasonably have caused some
2 degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

3 Second, “[i]f the claimant meets the first test and there is no evidence of
4 malingering, the ALJ can only reject the claimant’s testimony about the severity of
5 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
6 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
7 omitted). General findings are insufficient; rather, the ALJ must identify what
8 symptom claims are being discounted and what evidence undermines these claims.
9 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Thomas v.*
10 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
11 explain why it discounted claimant’s symptom claims)). “The clear and
12 convincing [evidence] standard is the most demanding required in Social Security
13 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
14 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

15 Factors to be considered in evaluating the intensity, persistence, and limiting
16 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
17 duration, frequency, and intensity of pain or other symptoms; 3) factors that
18 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
19 side effects of any medication an individual takes or has taken to alleviate pain or
20 other symptoms; 5) treatment, other than medication, an individual receives or has

1 received for relief of pain or other symptoms; 6) any measures other than treatment
2 an individual uses or has used to relieve pain or other symptoms; and 7) any other
3 factors concerning an individual's functional limitations and restrictions due to
4 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §
5 404.1529(c). The ALJ is instructed to "consider all of the evidence in an
6 individual's record," to "determine how symptoms limit ability to perform work-
7 related activities." SSR 16-3p, 2016 WL 1119029, at *2.

8 The ALJ found that Plaintiff's medically determinable impairments could
9 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's
10 statements concerning the intensity, persistence, and limiting effects of her
11 symptoms were not entirely consistent with the evidence. Tr. 18.

12 *1. Res Judicata*

13 The ALJ gave effect to the prior ALJ determination that Plaintiff's
14 symptoms resulted in the determined RFC. Tr. 18. While a previous ALJ's
15 findings concerning a claimant's RFC are entitled to some res judicata
16 consideration, the findings can be reconsidered by a subsequent judge upon
17 showing of new information that was not presented to the first judge. *Stubbs-*
18 *Danielson v. Astrue*, 539 F.3d 1169, 1173 (9th Cir. 2008) (citing *Chavez v. Bowen*,
19 844 F.2d 691,694 (9th Cir. 1988)).
20

1 The prior ALJ rendered his decision on May 26, 2016. Tr. 47-71. In the
2 2016 decision, the ALJ determined Plaintiff's severe impairments were
3 degenerative disc disease, obesity, sacroiliitis, and coccydynia. Tr. 53. In the
4 current decision, the ALJ again found Plaintiff's severe impairments were
5 degenerative disc disease, obesity, sacroiliitis, and coccydynia. Tr. 15. The ALJ
6 found there was no evidence of worsening in Plaintiff's symptoms between the
7 prior decision and the July 2016 date last insured. Tr. 18. Plaintiff contends her
8 symptoms worsened during the two-month period, and she began suffering from
9 left hip pain, which was a new symptom. ECF No. 10 at 7-8. However, Plaintiff
10 does not contend that she had a new severe impairment that caused the hip pain
11 that the ALJ failed to address, and does not cite to evidence that the hip pain
12 caused functional limitations not accounted for in the RFC. Plaintiff cites to two
13 July 2016 visits as evidence of worsening symptoms, due to her complaints at the
14 appointments and a new medication prescribed at an appointment. *Id.* Plaintiff
15 was treated with osteopathic manipulation and prescribed Norco. Tr. 588-92.
16 While Plaintiff reported the hip pain began April 2016, she did not report any
17 limitations caused by the pain. *Id.* Plaintiff does not cite to any evidence of her
18 reporting more severe symptoms and limitations than accounted for in the prior
19 decision. The ALJ reasonably gave effect to the ALJ's prior determination
20 regarding Plaintiff's symptom claims.

1 2. *Inconsistent Objective Medical Evidence*

2 The ALJ found Plaintiff's symptom claims were inconsistent with the
3 objective medical evidence. Tr. 18-19. An ALJ may not discredit a claimant's
4 symptom testimony and deny benefits solely because the degree of the symptoms
5 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261
6 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.
7 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch v. Barnhart*, 400
8 F.3d 676, 680 (9th Cir. 2005). However, the objective medical evidence is a
9 relevant factor, along with the medical source's information about the claimant's
10 pain or other symptoms, in determining the severity of a claimant's symptoms and
11 their disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. § 404.1529(c)(2).

12 While Plaintiff alleged worsening of her symptoms during the two-month
13 adjudicative period, the ALJ found the claim was inconsistent with the objective
14 evidence at the date last insured. Tr. 18. Although Plaintiff complained of hip
15 pain, she was treated with osteopathic manipulation and instructed to stretch and
16 apply heat. Tr. 591-92. Plaintiff reported her osteopathic treatment helped with
17 her pelvic pain but not her back pain. Tr. 589. She was started on Norco. Tr. 588.
18 There are no records documenting impaired gait, range of motion, nor any other
19 significant limitations caused by her impairments during the relevant period.
20

1 Later records also support the ALJ's finding that Plaintiff's symptoms are
2 not as severe as alleged. In February 2017, Plaintiff had "perhaps some mild
3 tenderness" in her back, Plaintiff reported using Norco "very sparingly" and she
4 was instructed to continue to use Norco only sparingly as needed for pain. Tr. 587.
5 Plaintiff was later referred for facet blocks and other treatment, *see, e.g.*, Tr. 585,
6 but this treatment all took place more than six months after the date last insured. In
7 June 2017, her provider noted Plaintiff "doesn't seem to have too much problem
8 with her back" and Plaintiff planned to use Tylenol for her pain. Tr. 323. Even
9 after the date last insured, she had a normal range of motion, and strength/tone
10 despite tenderness. Tr. 584. In 2020, Plaintiff reported no pain or discomfort for
11 two weeks, and she had normal range of motion and strength during occupational
12 therapy. Tr. 575. By 2021, she was using over the counter medication for her
13 pain, and she had full range of motion, a negative straight leg raises, and
14 tenderness/pain at the left SI joint but none along the spine. Tr. 578-79. In 2021,
15 Plaintiff reported osteopathic manipulation resolved her back pain. Tr. 577. On
16 multiple occasions, Plaintiff reported being too busy to attend appointments and
17 complete exercises. Tr. 467, 493, 563, 568, 577.

18 On this record, the ALJ reasonably found Plaintiff's allegations were
19 inconsistent with the objective medical evidence. This was a clear and convincing
20 reason, along with the other reasons offered, to reject Plaintiff's claims.

1 3. *Conservative Treatment*

2 The ALJ found Plaintiff's symptom claims were inconsistent with Plaintiff's
3 conservative treatment. Tr. 18-19. Evidence of "conservative treatment" is
4 sufficient to discount a claimant's testimony regarding the severity of an
5 impairment. *Parra v. Astrue*, 481 F.3d 742 (9th Cir. 2007) (citing *Johnson v.*
6 *Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (treating ailments with an over-the-
7 counter pain medication is evidence of conservative treatment sufficient to
8 discount a claimant's testimony regarding the severity of an impairment)); *see also*
9 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (holding that the ALJ
10 permissibly inferred that the claimant's "pain was not as all-disabling as he
11 reported in light of the fact that he did not seek an aggressive treatment program"
12 and "responded favorably to conservative treatment including physical therapy and
13 the use of anti-inflammatory medication, a transcutaneous electrical nerve
14 stimulation unit, and a lumbosacral corset").

15 During the relevant period, Plaintiff's pain was treated with osteopathic
16 manipulation and medication. Tr. 18, 588-92. Plaintiff contends she had nerve
17 blocks and other treatment; however, this treatment did not occur during the
18 relevant period. Tr. 18; ECF No. 10 at 8 (citing Tr. 301). At her appointments
19 during the relevant period, her provider did not recommend any additional
20 treatment beyond stretching and using a heat pack. Tr. 588-92. The ALJ

1 reasonably found Plaintiff's allegations were inconsistent with her conservative
2 treatment during the relevant period. This was a clear and convincing reason to
3 reject Plaintiff's symptom claims. Plaintiff is not entitled to remand on these
4 grounds.

5 **C. Medical Opinion Evidence**

6 Plaintiff contends the ALJ erred in her consideration of the opinion of
7 William Bothamley, M.D. ECF No. 10 at 13-19.

8 As an initial matter, for claims filed on or after March 27, 2017, new
9 regulations apply that change the framework for how an ALJ must evaluate
10 medical opinion evidence. *Revisions to Rules Regarding the Evaluation of*
11 *Medical Evidence*, 2017 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18, 2017); 20
12 C.F.R. § 404.1520c. The new regulations provide that the ALJ will no longer
13 "give any specific evidentiary weight . . . to any medical opinion(s) . . ." *Revisions*
14 *to Rules*, 2017 WL 168819, 82 Fed. Reg. 5844, at 5867-68; *see* 20 C.F.R. §
15 404.1520c(a). Instead, an ALJ must consider and evaluate the persuasiveness of
16 all medical opinions or prior administrative medical findings from medical sources.
17 20 C.F.R. § 404.1520c(a)-(b). The factors for evaluating the persuasiveness of
18 medical opinions and prior administrative medical findings include supportability,
19 consistency, relationship with the claimant (including length of the treatment,
20 frequency of examinations, purpose of the treatment, extent of the treatment, and

1 the existence of an examination), specialization, and “other factors that tend to
2 support or contradict a medical opinion or prior administrative medical finding”
3 (including, but not limited to, “evidence showing a medical source has familiarity
4 with the other evidence in the claim or an understanding of our disability
5 program’s policies and evidentiary requirements”). 20 C.F.R. § 404.1520c(c)(1)-
6 (5).

7 Supportability and consistency are the most important factors, and therefore
8 the ALJ is required to explain how both factors were considered. 20 C.F.R. §
9 404.1520c(b)(2). Supportability and consistency are explained in the regulations:

10 (1) *Supportability*. The more relevant the objective medical evidence
11 and supporting explanations presented by a medical source are to
12 support his or her medical opinion(s) or prior administrative
13 medical finding(s), the more persuasive the medical opinions or
14 prior administrative medical finding(s) will be.

15 (2) *Consistency*. The more consistent a medical opinion(s) or prior
16 administrative medical finding(s) is with the evidence from other
17 medical sources and nonmedical sources in the claim, the more
18 persuasive the medical opinion(s) or prior administrative medical
19 finding(s) will be.

20 20 C.F.R. § 404.1520c(c)(1)-(2). The ALJ may, but is not required to, explain how
the other factors were considered. 20 C.F.R. § 404.1520c(b)(2). However, when
two or more medical opinions or prior administrative findings “about the same
issue are both equally well-supported . . . and consistent with the record . . . but are
not exactly the same,” the ALJ is required to explain how “the other most

1 persuasive factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R.
2 § 404.1520c(b)(3).

3 The Ninth Circuit addressed the issue of whether the changes to the
4 regulations displace the longstanding case law requiring an ALJ to provide specific
5 and legitimate reasons to reject an examining provider’s opinion. *Woods v.*
6 *Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). The Court held that the new
7 regulations eliminate any hierarchy of medical opinions, and the specific and
8 legitimate standard no longer applies. *Id.* The Court reasoned the “relationship
9 factors” remain relevant under the new regulations, and thus the ALJ can still
10 consider the length and purpose of the treatment relationship, the frequency of
11 examinations, the kinds and extent of examinations that the medical source has
12 performed or ordered from specialists, and whether the medical source has
13 examined the claimant or merely reviewed the claimant’s records. *Id.* at 792.
14 However, the ALJ is not required to make specific findings regarding the
15 relationship factors. *Id.* Even under the new regulations, an ALJ must provide an
16 explanation supported by substantial evidence when rejecting an examining or
17 treating doctor’s opinion as unsupported or inconsistent. *Id.*

18 On June 10, 2019, Dr. Bothamley, a treating provider, rendered an opinion
19 on Plaintiff’s functioning. Tr. 437-38. Dr. Bothamley diagnosed Plaintiff with
20 chronic low back pain/pelvic pain, with recent pain into right leg consistent with

1 sciatica. Tr. 437. He opined that Plaintiff needs to lie down six to eight hours in a
2 day; working on a regular/continuous basis would cause Plaintiff's condition to
3 deteriorate; Plaintiff would miss four or more days per month if she worked full-
4 time; and her limitations have existed since April 2008. Tr. 437-38. The ALJ
5 found Dr. Bothamley's opinion was not persuasive. Tr. 19.

6 First, the ALJ found Dr. Bothamley's opinion was not supported by his own
7 treatment records. *Id.* Supportability is one of the most important factors an ALJ
8 must consider when determining how persuasive a medical opinion is. 20 C.F.R. §
9 404.1520c(b)(2). The more relevant objective evidence and supporting
10 explanations that support a medical opinion, the more persuasive the medical
11 opinion is. 20 C.F.R. § 404.1520c(c)(1). The ALJ noted that Dr. Bothamley's
12 treatment records from an appointment close to the date last insured do not support
13 his opinion. Tr. 19 (citing Tr. 299-300). Dr. Bothamley's February 2017 record
14 says Plaintiff's back "does show perhaps some mild tenderness," and he noted
15 Plaintiff was only "very sparingly" using her pain medication. Tr. 299-300. In
16 2018, Dr. Bothamley noted Plaintiff had normal ambulation. Tr. 352, 354. In
17 2019, at the time he completed the disability questionnaire, Dr. Bothamley noted
18 there was no specific tenderness in the lumbar region. Tr. 19 (citing Tr. 442). The
19 ALJ reasonably found Dr. Bothamley's records to be inconsistent with his
20 disabling opinion.

1 Second, the ALJ found Dr. Bothamley's opinion was inconsistent with the
2 record as a whole. Tr. 19. Consistency is one of the most important factors an
3 ALJ must consider when determining how persuasive a medical opinion is. 20
4 C.F.R. § 404.1520c(b)(2). The more consistent an opinion is with the evidence
5 from other sources, the more persuasive the opinion is. 20 C.F.R. §
6 404.1520c(c)(2). The ALJ found Dr. Bothamley's disabling opinion was
7 inconsistent with Plaintiff's normal lumbar and pelvis x-rays. Tr. 19 (citing Tr.
8 348, 350). As discussed *supra*, examinations in 2016 and 2017 also documented
9 only mild spinal tenderness, and normal range of motion, strength, and ambulation.
10 Tr. 19. The ALJ reasonably found Dr. Bothamley's opinion was inconsistent with
11 the record as a whole. Plaintiff is not entitled to remand on these grounds.

12 CONCLUSION

13 Having reviewed the record and the ALJ's findings, the Court concludes the
14 ALJ's decision is supported by substantial evidence and free of harmful legal error.
15 Accordingly, **IT IS HEREBY ORDERED:**

- 16 1. Plaintiff's Opening Brief, **ECF No. 10**, is **DENIED**.
 - 17 2. Defendant's Brief, **ECF No. 11**, is **GRANTED**.
 - 18 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.
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1 The District Court Executive is directed to file this Order, provide copies to
2 counsel, and **CLOSE THE FILE.**

3 DATED August 14, 2023.

4 *s/Mary K. Dimke*
5 MARY K. DIMKE
6 UNITED STATES DISTRICT JUDGE
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